

(2015) 12 KAR CK 0183
In the Karnataka High Court
Case No : Criminal Petition No. 3524/2011

P.K. Ramesh

APPELLANT

Vs

K.E. Poornesh and Others

RESPONDENT

Date of Decision : 02-12-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 155(1), 161, 420, 482
Penal Code, 1860 (IPC) — Section 34, 415, 420

Citation : (2015) 12 KAR CK 0183

Hon'ble Judges : Rathnakala, J.

Bench : Single Bench

Advocate : S.G. Bhagavan, Advocate, for the Appellant; D.G. Chinnappa Gowda, Advocate, for the Respondent

Final Decision : Allowed

Judgement

Rathnakala, J.—The petitioner along with accused No. 2 is charge sheeted for the offence punishable under Section 420 r/w Section 34 of IPC.

2. The allegation of the prosecution is that the complainant who had grown ginger crop in his land approached the petitioner who runs "Plantation Services" shop and requested pesticides for treatment of ginger seeds. The first petitioner without delivering the required pesticide gave him pesticide called Ridomil and Matador. The second accused is the representative of the company, who manufactures said pesticide/insecticide was present at the shop and recommended that it is good for treatment and yields good crop. Believing the said version, the complainant purchased the same and treated the ginger seeds. Three months thereafter, the entire crop withered and decayed, thereby causing loss to the tune of Rs. 12,00,000/-.

3. Sri. S.G. Bhagavan, learned counsel for the petitioner submits that assuming for a while that the entire case of the prosecution as brought down from the statement of witnesses and also the scientific evidence is true, then also the charge sheet material fails to make out a case for the offence under Section 420

of IPC. The basic ingredient of Section 420 of IPC to cheat/deceive being not seen either in the complaint allegations or in the subsequent statements of witnesses, the petitioner cannot be prosecuted for the offence under Section 420 of IPC. Even assuming for a while that falling short of the offence under Section 420 of IPC, it is a case for offence under Section 415 of IPC, said offence under Section 415 of IPC being non-cognizable in nature, the Investigating Officer could not have investigated the matter in violation of the procedure contemplated under Section 155(1) and (2) of Cr.P.C, it is a bar for the Court to take cognizance of the matter. Further, in the absence of any incriminating material, fastening the liability against him for the offence punishable under Section 420 of IPC is a pure abuse of process of law and the criminal proceedings may be quashed by exercising the jurisdiction under Section 482 of Cr.P.C. It is further submitted that so far no action is taken by the appropriate authority under the Insecticides Act, 1968 against the petitioner and the concerned persons for selling the sub-standard pesticide/insecticide. It is submitted that in similar circumstances this Court in the matter reported in M/s Silk Import and Export Inc. Vs. M/s Exim Aides Silk Exporter and another, and in the judgment reported in India Brewery and Distillery Limited, Bangalore and Others Vs. Shaw Wallace and Company Limited, Bangalore, , Bangalore have quashed the proceedings in exercise of jurisdiction under Section 482 of Cr.P.C.

4. In reply, the learned High Court Government Pleader for the State would submit that the complaint by itself not being an encyclopedia, the subsequent evidence collected by the Investigating Officer make out a case that the petitioner herein along with accused No. 2 who is the representative of the company have made a representation that the said pesticide/insecticide is a proper drug to use for the treatment of ginger seeds. The vicarious liability for the offence under Section 420 of IPC with the aid of Section 34 of IPC is made out against the petitioner. The case of the petitioner that he had no intention to cheat the complainant is a matter of defence to be proved by him before the Court during trial and no case is made out by the petitioner to invoke the extraordinary jurisdiction of this Court under Section 482 of Cr.P.C.

5. In the light of the above submissions, on perusal of the complaint averments and the witnesses statements it emerges that when the complainant sought for a good pesticide/insecticide to treat his ginger crop, the petitioner and the co-accused represented that Ridomil and Matador is good for ginger treatment. Believing the said version, he purchased the same and thereafter suffered the result. Three of the witnesses suffered same result for using the very same Ridomil/Matador on the representation of both the accused. It is also the complaint allegation that subsequently, the complainant contacted accused No. 2 and enquired about the matter, but accused No. 2 though assured to solve the problem, thereafter evaded.

6. The opinion of the experts from the University of Agricultural Sciences, Bangalore in respect of the infected ginger is also placed on record. The opinion

does not conclusively point out that Ridomil and Matador was either the proper medicine or it adversely affects the ginger crop. Coming back to the ingredients of Section 420 of IPC, it demands the dishonest intention at the threshold itself on the part of the perpetrator to cheat the victim. Such averment is lacking either in the complaint or in the statements recorded by the Investigating Officer under Section 161 of Cr.P.C. of the victims, who suffered the same result by using Ridomil and Matador.

In the case of Vesa Holdings P. Ltd. and Others Vs. State of Kerala and Others , wherein it has held at para-13 of its judgment as under:

"13. It is true that a given set of facts, may make out a civil wrong as also a criminal offence and only because a civil remedy may be available to the complainant that itself cannot be a ground to quash a criminal proceeding. The real test is whether the allegations in the complaint disclose the criminal offence of cheating or not. In the present case there is nothing to show that at the very inception there was any intention on behalf of the accused persons to cheat which is a condition precedent for an offence under Section 420 of IPC. In our view, the complaint does not disclose any criminal offence at all. The criminal proceedings should not be encouraged when it is found to be malafide or otherwise an abuse of the process of the Court. The superior courts while exercising this power should also strive to serve the ends of justice. In our opinion, in view of these facts allowing the police investigation to continue would amount to an abuse of the process of the Court and the High Court committed an error in refusing to exercise the power under Section 482 of Criminal Procedure Code to quash the proceedings."

The facts placed on record fall short of requirement of Section 420 of Cr.P.C. Continuance of the criminal case against the petitioner for the offence under Section 420 of IPC is a waste exercise and also abuse of process of law since the petitioner has to face the ordeal of trial.

Accordingly, petition is allowed. The criminal proceedings in C.C. No. 301/2011 pending on the file of CJM, Chikmagalur so far the petitioner is concerned is quashed.